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Lee, Mann, Smith, McWilliams, Sweeney & Ohlson  
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EXAMINER

ALEXANDER, JESSE NELSON

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 06/18/2004

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/745,889

Examiner

Jesse N Alexander

Applicant(s)

KADENGAL, RADHAKRISHNAN

Art Unit

2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because: The acronym "WtP" (page 27, line 4) has not been defined prior to its use. Correction is required. See MPEP § 608.01(b).
2. The disclosure is objected to because of the following informalities:
  - The acronym "WtP" (page 1, line 29) has not been defined prior to its use in the specification.
  - There is a series of incomplete sentences beginning on page 16 at line 12 and ending at line 25.

Appropriate correction is required.

### ***Drawings***

3. The drawings (figures 1 through 6) are objected to because the lettering and shading has is illegible. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance

### ***Claim Objections***

4. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

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Misnumbered claim 12 (on page 25) has been renumbered 11.

Misnumbered claim 13 has been renumbered 12.

Misnumbered claims 12 (on page 26), 13, and 14 have been renumbered 13 through 15, respectively.

5. Claim 1 is objected to because of the following informalities: The acronym "WtP" (page 21, line 5) has not been defined prior to its use. Appropriate correction is required.

6. Claim 4 is objected to because of the following informalities: steps are not labeled in a consistent manner. Steps (vii) through (xi) should be labeled (a) through (e), respectively. Appropriate correction is required.

7. Claims 2 and 3 are objected to because of the following informalities: The phrase "control loop" is not specific. Please replace the phrase with "first control loop". Appropriate correction is required.

8. Claim 11 is objected to because of the following informalities: "setpoint" should be replaced with the phrase "set point". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 1 through 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- In step (d), (i), claim 1 recites the limitation "the actual network performance".

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- In step (d), (ii), claim 1 recites the limitations "the actual performance" and "the set point".
- In step (d), (iii), claim 1 recites the limitation "the respective difference value".
- In step (d), (iv), claim 1 recites the limitations "each user" and "the path".
- In step (d), (v), claim 1 recites the limitations "each user".
- In step (d), (vi), claim 1 recites the limitations "the ingress router" and "the network ingress".
- Claim 1 recites the limitations "the actual network performance" (line 27), and "the network ingress routers (line 29)."

There is insufficient antecedent basis for these limitations in the claim.

- Claim 4 recites the limitation "the second set point value" (page 22, line 10)
- In step (a), claim 4 recites the limitations "the actual second performance parameter" (page 22, line 15)
- In step (c), claim 4 recites the limitation "the respective difference value".
- In step (d), claim 4 recites the limitations "each user" and "the path".
- Claim 4 recites the limitations "the ingress router" (page 22, line 28) "the network ingress" (lines 28-29), "allocated resource share values" (page 22, line 30), "the actual network performance" (page 22, line 30), and "network ingress routers (page 22, line 33)".

There is insufficient antecedent basis for these limitations in the claim.

- Claim 5 recites the limitation "the set point value" in line 2.
- Claim 5 recites the limitation "the price values" in line 3.

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There is insufficient antecedent basis for these limitations in the claim.

- Claims 7 and 8 recite the limitation "the difference value" (page 23, lines 15 and 19, respectively). There is insufficient antecedent basis for this limitation in the claim.
- In step c, (ii), claim 9 recites the limitations "the actual performance" (page 23, line 34), and "the predetermined set point (page 23, line 29)".
- In step c, (iv), claim 9 recites the limitation "the path".
- In step (c), (vi), claim 9 recites the limitation "the network ingress"

There is insufficient antecedent basis for this limitation in the claim.

- In step (d), (i), claim 10 recites the limitation "the actual network performance".
- In step (d), (ii), claim 10 recites the limitations "the actual performance" and "the set point".
- In step (d), (iii), claim 10 recites the limitation "the respective difference value".
- In step (d), (iv), claim 10 recites the limitations "each user" and "the path".
- In step (d), (v), claim 10 recites the limitation "each user"
- In step (d), (vi), claim 10 recites the limitations "the ingress router" and "the network ingress".
- Claim 10 recites the limitations "the actual network performance" (page 25, line 7), and "the network ingress routers (page 25, line 9)."

There is insufficient antecedent basis for these limitations in the claim.

- On page 25, lines 14 and 17, claim 11 recites the limitation "the network performance".

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- On page 25, lines 16 through 17, claim 11 recites the limitation "the bandwidth".
- On page 25, line 17, claim 11 recites the limitation "the bandwidth".
- On page 25, line 17, claim 21 recites the limitation "the ingress router".

There is insufficient antecedent basis for these limitations in the claim.

- In step c, (ii), claim 12 recites the limitations "the actual performance" (page 26, line 1), and "the predetermined set point (page 26, line 3)".
- In step c, (iv), claim 12 recites the limitation "the path".
- In step (c), (vi), claim 12 recites the limitation "the network ingress"

There is insufficient antecedent basis for this limitation in the claim.

- The claims 13, 14, and 15 recite the limitation "the user" on page 26 at lines 21, 26, and 31 through 32, respectively. There is insufficient antecedent basis for this limitation in the claim.

11. Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as the claimed invention is not described in such full, clear, concise and exact terms as to enable any person skilled in the art to make and use the same. The claim is nonenabling because it is a single means claim (see MPEP 2164.08(a)).

### ***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 13 through 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Kirkby et al. (US 6,498,786 B1). Kirkby et al. discloses a process, and the software implementation of said process, wherein a network operator in the form of a customer premises equipment (CPE) manager (Figure 3. and column 11, line 62 through column 12 line 6) determines willingness to pay values for user traffic in a network. Kirkby et al. also teaches that managers receive and respond to resource prices from the network (see column 12, lines 16 through 21).

#### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art listed below discloses processes, methods and/or devices that address claims in the application:

- Sabry et al. US 6,728,266 B1
- Kirkby et al. US 6,556,548 B1
- X. Wang, H. Schulzrinne, "Performance Study of Congestion Price based Adaptive Service," Jun. 2000, In Proc. International Workshop on Network and Operating System Support for Digital Audio and Video (NOSSDAV'00), pp. 1--10


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jesse N Alexander whose telephone number is (703) 305-8709. The examiner can normally be reached on 8:30am to 5:00pm.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (703) 308-5463. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JNA



RICKY NGO  
PRIMARY EXAMINER